

Screening for Domestic Violence and Child Abuse: Divorce and Child Custody Mediation

Developed by
Pennsylvania Coalition Against
Domestic Violence, Legal Department
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112
717/671-8793
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Women's Law Project
125 S. Ninth Street, Suite 401
Philadelphia, PA 19107
215/928-9801

I. Purpose

This screening process is designed to identify parties or children of parties involved in divorce or custody actions for whom mediation may be inappropriate or who are exempt from mandatory mediation orientation and mediation because of abuse pursuant to 23 P.S.A. §3901(c)(2).

II. Domestic Violence and Child Abuse Exemption

Pennsylvania law does not permit courts to order an orientation session or mediation in a case where either party or a child of either party is or has been a subject of domestic violence or child abuse at any time during the pendency of an action for divorce or child custody or during the twenty-four (24) months preceding the filing of any such action. 23 P.S.A. § 3901.

Should abuse have occurred more than twenty-four (24) months prior to the filing of the action, court personnel should evaluate whether the case is appropriate for court ordered mediation orientation. In making a determination, court personnel should consider such factors as whether a party articulates fear of the other party or appears to lack the capacity to fully and fairly participate in negotiations with the other party, and whether a party appears likely to utilize coercive tactics or to withhold financial and other information critical to an informed process and fair outcomes.

III. The Screening Process

- 1) **Averment of Domestic Violence or Child Abuse.** A party may claim an exemption from mediation orientation or mediation by completing a written averment that domestic violence has occurred during the pendency of an action or during the twenty (24) months preceding the filing of the action. Completion of the averment shall preclude court referral or mandate to mediation orientation and mediation. Courts shall adopt an "Averment for Exemption" form to record a party's disclosure of abuse and the averment shall become part of the record.
- 2) **Court Review.** Prior to entering a court order requiring mediation orientation or mediation, court personnel must review the prior criminal history, the neglect, abuse and dependency adjudications and civil action records involving both parties to determine whether the records reflect that domestic violence or child abuse has occurred during the pendency of the action or within twenty four (24) months prior to the filing of the action. If the records reflect that domestic violence or child abuse has occurred within twenty-four (24) months prior to the filing of the action, the parties shall be informed that mediation orientation cannot be compelled. The court shall advise the abused party to consult with an advocate before electing to participate in mediation orientation or mediation.
- 3) **Telephone Screening.** If domestic abuse or child abuse is not identified by the screening methods in paragraphs one and two, the court shall contact the parties by telephone and

inform the parties of the exemption available under the law. If a party discloses abuse on the telephone, but expresses interest in mediation, the court shall schedule each party for an in-person screening pursuant to paragraph four. If neither party discloses abuse, the court shall conduct screening pursuant to paragraph four.

- 4) **In-person Interview.** Some victims of domestic violence and/or child abuse will readily talk about the violence they are experiencing or have experienced if they feel safe and supported. However, many others may not identify themselves as victims of abuse the first time an inquiry is made about violence or abuse in their lives. Victims may be willing to self-identify in circumstances where they think that the inquiring professional will believe their allegations, where it is safe to share, where the victim trusts the information will be handled responsibly by the system, and where the victim has identified the violence as abuse. Court personnel shall undertake in-person interviews to determine whether domestic violence or child abuse is a factor exempting the parties from orientation and mediation in accord with the following:
 - a. Structure of the screening interview:
 - i. The person conducting the screening must be trained in domestic violence.
 - ii. Screening must be undertaken before an order for mediation orientation is issued.
 - iii. Screening of each party must be conducted separately, preferably scheduled at different times or locations. Interviewing one party directly after the other is to be avoided. In no event should parties ever be asked to wait in a room together before or after a screening.
 - iv. When scheduling a screening, inquire whether a party has any safety concerns about coming to the screening location. Arrangements should be made to respond to the safety concerns of the parties. Providing an escort for a party from and to the parking lot or public transportation may enhance safety.
 - v. Conduct screenings in an environment that allows the greatest degree possible of privacy. Once a screening session begins, the session should not be interrupted.
 - vi. At the election of a party, screening may be conducted with an attorney or an identified victim advocate present. The other party's lawyer or advocate must not be present during the screening.
 - vii. A policy of strict confidentiality must be maintained during the screening process. Each party must be informed of the policy. Parties must be assured that information shared during the screening will not be revealed to anyone else, except where there is a duty to warn of imminent danger of physical harm to another person or to oneself. However, information may be revealed to others with the informed, written consent of the party to whom confidentiality is owed.
 - b. Guidelines for screening interview:
 - i. Observe behavior during the scheduling phone call, in the waiting room, and during screening to pick up cues that could indicate an abusive relationship.
 - ii. Explain to each party that as a matter of routine procedure, you are required to meet with parties individually prior to any court ordered mediation orientation session and before beginning mediation.
 - iii. Explain the goals and process of mediation. Inquiries should be made about the advocacy and negotiation skills of each party, the capacity of each to acknowledge the independent interests of the other party, the decision-making practices of the relationship, and the distri-

bution of the personal and economic resources of the parties. In addition, complete the attached questionnaire to identify practices of abuse, coercion, and threats by a party and any impact of the practices on the other. Give each party the opportunity to express concerns about the mediation process and to assess whether mediation is an appropriate way to reach an agreement about the legal and/or parenting issues in their case.

- iv. Inform the parties and their attorneys of the policy to keep screening sessions confidential and the exceptions to that policy. Information disclosed by an individual party during the screening process may not be disclosed to anyone else without the party's consent.
- v. During the interview, GO SLOW! Ask questions slowly and wait for answers. Each item in the Screening Questionnaire, below, should be asked and explored fully. Ask follow-up questions, if necessary, and note answers in the comment section. Explain to attorneys that the process will move faster if the screener proceeds without interruption.
- vi. Preface questions with reassurances to reduce awkwardness in the following way: "We know that domestic violence and child abuse are very common problems. Some of the questions that I'm going to ask you relate to that. I ask every person who I screen for the mediation orientation about the possibility of violence in their relationship with the other party who is involved in the case."
- vii. Explain to each party that the court is not permitted to mandate or refer to an orientation session or mediation in cases in which abuse has been involved. Also explain that parties may choose to attend an orientation session and/or mediation if the screener concludes that the parties have equivalent and adequate capacities to mediate, that mediation can be effectively and safely undertaken and a fair agreement reached.

Explain also the potential impact of abuse on the ability of the parties to participate fully and fairly in mediation, the parties' right to address and have accommodated any concerns they may have about safety, and their right to terminate mediation at any time.

- viii. Do not question allegations of abuse, but seek to determine how recently the abuse occurred and both its frequency and severity. Evidence that abuse has occurred during the pendency of the action or within twenty-four months preceding the filing of an action is sufficient to determine that a mandate to mediation orientation and mediation are inappropriate
- ix. Do not mediate divorce or custody issues during the screening.

c. Screening Questionnaire:

These screening questions are intended to identify information about violent, abusive, and intimidating conduct of either party. The parties may not recognize that these behaviors are present in their relationship, however, where patterns of abuse, coercion, threats or intimidation are identified, these may indicate that the case is inappropriate for mediation orientation and mediation. The frequency and severity of abuse, the occurrence of abuse after separation of the couple, and the nature of the most recent abusive conduct are important factors to consider in assessing whether a couple may be appropriately and safely referred or mandated to orientation or mediation.

1. Do you have concerns about engaging in mediation as a way to resolve the legal and/or parenting disputes in your case?

No Concerns A Few Concerns Many Concerns

Comments: _____

2. Has the other party ever acted in ways that frighten you?

Never Sometimes Frequently

Comments: _____

If yes, recently? _____

3. Are the two of you able to talk to each other without arguing?

Never Sometimes Usually Always

Comments: _____

4. Are you fearful about being in the same room with the other party?

Never Sometimes Usually Always

Comments: _____

5. Are you able to speak your mind and express your point of view to the other party?

Never Sometimes Often Always

Comments: _____

6. When you speak your mind and express your point of view to the other party, does the other party become angry and threatening or intimidating?

Never Sometimes Often Always

Comments: _____

7. Has the other party ever threatened to hurt you or members of your family?

Never Sometimes Often

Comments: _____

If yes, recently? _____

8. Has the other party ever destroyed your property or that of your children intentionally?

Never Sometimes Often

Comments: _____

If yes, recently? _____

9. Does the other party swear or call you demeaning names during arguments?

Never Sometimes Often

Comments: _____

10. Has the other party ever threatened to take the children and stop you from seeing them?

Never Sometimes Often

Comments: _____

If yes, recently? _____

11. Has the other party ever threatened to hurt her/himself?

Never Sometimes Often

Comments: _____

If yes, recently? _____

12. Do you ever become afraid for yourself or others based on the looks from or actions of the other party?

Never Sometimes Often

Comments: _____

If yes, recently? _____

13. Has the other party ever hit, shoved, or pushed you?

Never Sometimes Often

Comments: _____

If yes, recently? _____

14. If the other party has ever used physical force against you, have your children been present?

Never Sometimes Often

Comments: _____

15. Have you or anyone else ever called the police because of problems in your home?

Never Sometimes Often

Comments: _____

16. Have you or any family member ever sought medical treatment as a result of an injury caused by the other person?

Never Sometimes Often

Comments: _____

17. Have your children ever been taken into protective custody by the police, child protection services or the court?

Never Sometimes Often

Comments: _____

18. Are you afraid that if you agree to mediation, the other person might retaliate or hurt your children because of what you say in mediation sessions?

Comments: _____

19. Did the two of you agree about finances in your relationship?

Never Sometimes Often

Comments: _____

20. Have you or the other party ever sought a Protective Order which involved the other party at any time in any place?

No Once More than Once

Comments: _____

21. Have you or the other party ever had a protective order against you?

No Once More than Once

Comments: _____

22. Are you afraid that the other person will not let you talk in the mediation process?

Never Sometimes Often

Comments: _____

23. Do you fear that the other party will verbally attack you at the mediation session or sometime later?

Never Sometimes Often

Comments: _____

24. Do you fear that the other person will physically attack you during the mediation or sometime later?

Never Sometimes Often

Comments: _____

NOTE: The presence of violence, threats of violence, or intimidation exempts the case from referral or mandate to orientation and mediation. Parties and their attorneys should be notified that although mediation orientation cannot be ordered if domestic violence or child abuse is a factor, there is no preclusion from either or both of the parties attending the mediation orientation session.

If domestic violence or child abuse has occurred, the parties may voluntarily elect mediation. However, only when a mediator concludes both that the parties have the requisite skills and equivalent capacity to mediate and that a fair and safe agreement may be accomplished between the couple should mediation be undertaken. Mediation in the context of domestic violence must be conducted by mediators expert on domestic violence and must be structured carefully to promote safety of the parties and the mediator. If abuse is identified by either party or the mediator, the abused party should be referred to a domestic violence advocacy organization to discuss social and legal options and to consider whether mediation is a safe option.

IV. Screening by Mediators

There is a continuing requirement for mediators to screen for domestic violence before each session. The parties should be fully and regularly informed that mediation is a voluntary process and that they may withdraw for any reason.

- 1) **Safe and Informed Termination of Mediation.** Anytime during the course of mediation, if either a party opts to withdraw or the mediator finds that mediation is not safe because of domestic violence or child abuse, the mediation should be terminated in the following manner:
 - a. If domestic violence or child abuse is revealed for the first time after mediation has commenced, the mediator shall interrupt the proceeding and conduct a screening of both parties separately to determine whether mediation is appropriate and whether the party who has been subject to domestic abuse understands the potential impact of abuse on that party's ability to participate in mediation fully and fairly. If the party subjected to abuse and the mediator agree that neither domestic abuse nor child abuse is an inhibiting factor, the mediation shall proceed. The mediator shall discuss and plan safety precautions with the party who has been subject to violence. If either the party subject to violence or the mediator determine that mediation is inappropriate, then it should be terminated.
 - b. Should mediation be terminated, the mediator should not advise the parties that the reason for termination is the presence, currently or formerly, of domestic violence in the relationship. Instead, the mediator should offer less explicit rationale. Explain that you do not believe it is possible to continue, or that you cannot continue because it is impossible for you to maintain neutrality. Emphasize that you, the mediator, are making the decision. If the parties or counsel will not accept this answer, refer them to the supervisor of the mediation program.
 - c. Consult privately with the abused party to determine whether safety arrangements are necessary. If necessary, make arrangements for the parties to leave separately, with the abused party leaving first and permitted reasonable time for departure. Consider whether to alert court security of potential for violence and arrange for escort of the abused party to transportation. Do not reveal the destination or means of transportation of the abused party to the other party.
 - d. If possible without endangering the abused party, provide the party with information and referrals for assistance.
 - e. If you have learned of a threat of imminent danger of physical harm to any person, you must inform the person who is the target of the threat or if the threat is against a child, the law may require that a CPS referral be made.

- f. Advise court security and the supervisor of the mediation program if you learn of threat of imminent danger of physical harm to any person.
- g. Inform the supervisor of the mediation program if you terminate a session due to issues relating to domestic violence or abuse.

V. Referral and Assistance

- 1) **Domestic Violence Advocacy Referral.** If a screener for mediation orientation or a mediator concludes that domestic abuse or child abuse has occurred, the abused party shall be provided with information about and referral to a domestic violence advocacy agency. The information should be provided only when the other party is not present.
- 2) **Availability of Resource Information.** Information about domestic violence and child abuse and referral for assistance should be available in the women's rest room of court and mediation facilities.

